CHAPTER 52-04
CONTRIBUTIONS

52-04-00.1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agency" or "bureau" means job service North Dakota.

2. "Client company" means a person that contracts to receive services, within the course of that person's usual business, from a staffing service or that contracts to lease any or all of that person's employees from a staffing service.

3. "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

4. "Staffing service" means an employer in the business of providing the employer's employees to a client company to perform services within the course of that client company's usual business. The term includes a professional employer organization, a staff leasing company, an employee leasing organization, and a temporary staffing company. The term "staffing service" must be broadly construed to encompass an entity that offers services provided by a professional employer organization, a staff leasing company, an employee leasing organization, or a temporary staffing company, regardless of the term used.

5. "Temporary staffing" or "temporary staffing service" means an arrangement through which an employer hires its own employees and assigns the employees to a client company to support or supplement the client company's workforce in a special work situation, including an employee's temporary absence; a temporary skill shortage; a seasonal workload; or a special assignment or project with a targeted end date.

   The term does not include an arrangement through which the majority of the client company's workforce has been assigned by a temporary staffing service for a period of more than twelve consecutive months.

6. "Unemployment insurance tax rate" means the rate calculated or assigned under sections 52-04-05 and 52-04-06.

7. "Violates or attempts to violate" includes intent to evade, misrepresentation, and willful nondisclosure.

8. "Workforce" means some or all of the employees of a transferring employer.

52-04-01. Payment of contributions by employer.

1. Contributions accrue and become payable by each employer, for each calendar year in which the employer is subject to the North Dakota Unemployment Compensation Law, with respect to wages for employment. Such contributions become due and must be paid by each employer to the bureau for the fund in accordance with such regulations as the bureau may prescribe, and may not be deducted in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of a cent must be disregarded unless it amounts to one-half cent or more, in which case it must be increased to one cent.

2. Contributions due with respect to wages for insured work must be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law, if payment into the fund of such contributions is made on such terms as the bureau finds will be fair and reasonable as to all affected interests.

52-04-02. Rates and base of contributions of wages payable by employer. Each employer shall pay contributions equal to the following percentages of wages payable by the employer with respect to employment:

1. One and eight-tenths percent with respect to employment occurring during the calendar year 1937.

2. Two and seven-tenths percent with respect to employment occurring during the calendar years 1938, 1939, and 1940.

52-04-03. Rates and base of contributions of wages paid by employer.

1. Subject to the exceptions and modifications provided for in this section and elsewhere in this chapter, each employer shall pay contributions to the fund equal to two and seven-tenths percent of wages paid by the employer to any one individual employee during a calendar year with respect to employment, which also includes service constituting employment under the employment security law of any other state as defined in the North Dakota Unemployment Compensation Law or of the federal government. "Employment", as so inclusive, is applicable throughout to this chapter.

2. The amount of an individual's wages paid to that individual in a calendar year by each employer and subject to tax may not be in excess of three thousand dollars for the years prior to 1968, nor in excess of three thousand three hundred dollars for 1968, nor in excess of three thousand four hundred dollars for 1969, nor in excess of three thousand eight hundred dollars for 1970, nor in excess of four thousand dollars for 1971, nor in excess of four thousand four hundred dollars for 1972, nor in excess of four thousand two hundred dollars for 1973, 1974, 1975, and 1976, nor in excess of four thousand three hundred dollars for 1977, and not in excess of six thousand dollars in 1978.

3. For the year 1979 and each year thereafter, the amount of an individual's wages subject to tax, paid by each employer, must be in such amount as determined to be in an amount that is equal to seventy percent of a statewide average annual wage, rounded to the nearest one hundred dollars, determined by the bureau on or before each first day of October by the following computation:

   The total wages reported on contribution reports for the third and fourth quarters of the preceding calendar year and the first and second quarters of the current calendar year must be divided by the average monthly number of covered workers for the same four quarters, whose number must be determined by dividing by twelve the total covered employment reported on contribution reports for those quarters, and the quotient obtained by dividing the total wages by the average monthly number of covered workers is the statewide average annual wage.

4. Notwithstanding any of the provisions of subsection 3, the amount of an individual's wages subject to tax must always be at least equal to the amount that is subject to tax under the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.].

52-04-04. Separate account of employer's contributions kept. The bureau shall maintain a separate account for each employer showing the employer's contributions and shall credit the employer's account with all the contributions paid by the employer since January 1, 1937. The provisions of the North Dakota Unemployment Compensation Law may not be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

52-04-05. Determination of rates.

1. As used in this section:

   a. "Income needed to pay benefits" means the estimate of benefits payable in a given calendar year less the estimate of interest to be earned by the unemployment insurance trust fund for that calendar year.

   b. "Solvency balance" means the income needed, whether a positive or negative figure, in a given rate year to reach the solvency target over the number of years remaining of the period within which the solvency target is to be reached plus the estimate of the amount of income needed to pay benefits.

   c. "Trust fund reserve" excludes all Reed Act [42 U.S.C. 1103] cash.

2. For each calendar year, the bureau separately shall estimate the amount of income needed to pay benefits and shall estimate the amount of income needed to reach a solvency balance in the unemployment insurance trust fund, that moves toward the solvency target amount as determined under this subsection. The solvency target is an average high-cost multiple of one. The average high-cost multiple is the number of years the bureau could pay unemployment compensation, based on the reserve ratio, if the bureau paid the compensation at a rate equivalent to the average benefit cost rate in the one calendar year during the preceding twenty calendar years and the two calendar years during the preceding ten calendar years in which the benefit cost rates were the highest. "Reserve ratio" means the ratio determined by dividing the balance in the trust fund reserve at the end of the calendar year by the total covered wages in the state for that year. "Benefit cost rate" means the rate determined by dividing the unemployment compensation benefits paid during a calendar year by the total covered wages in the state for that year. The computation of the reserve ratio and benefit cost rate must exclude the wages and unemployment compensation paid by employers covered under section 3309 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3309].

3. The initial trust fund solvency target must be achieved over a seven-year period from January 1, 2000. After the solvency target required by this section is reached, the calculation of the solvency target must be continued and, if the trust fund reserve as of December thirty-first of any year is less or greater than the solvency target, the rates must be adjusted so that one-fifth of the difference between the solvency target and the current trust fund reserve is estimated to be collected in the following rate year.

4. Progress toward achieving the solvency target is measured by reducing any difference between one and the average high-cost multiple of the state by an amount that is at least equal to the ratio of the number of years left to reach the solvency target to the difference between the trust fund reserve and the targeted amount. In setting tax rates, the amount of the trust fund reserve may not be allowed to fall below three hundred percent from a standard margin of error for the targeted amount of the trust fund reserve. The executive director may make reasonable adjustments to the tax rates set for a calendar year to prevent significant rate variations between calendar years.

5. Rates must be determined as follows:

   a. The income needed to pay benefits for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of one percent is the average required rate needed to pay benefits.

   b. If the positive employer maximum rate necessary to generate the amount of income needed to pay benefits is at least one percent, the positive employer minimum rate necessary to generate the amount of income necessary to pay

benefits is the foregoing positive employer maximum rate, minus nine-tenths of one percent. If the positive employer maximum rate necessary to generate the amount of income needed to pay benefits is less than one percent, the range for the positive employer minimum rate necessary to generate the amount of income needed to pay benefits must be at least one-tenth of one percent and must be less than two-tenths of one percent, with the positive employer maximum rate necessary to generate the amount of income needed to pay benefits equal to the positive employer maximum rate, as used in this subsection, minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. Within the table of rate schedules to be utilized for each calendar year to establish the tax rates necessary to generate the amount of income needed to pay benefits, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The negative employer minimum rate needed to generate the amount of income needed to pay benefits is the positive employer maximum rate as described in this subsection plus five and one-tenth percent.

c. The positive employer maximum rate necessary to generate the amount of income needed to pay benefits must be set so that all the rates combined generate the average required rate for income needed to pay benefits, multiplied by the ratio, calculated under subdivision d, needed to reach the solvency balance. The negative employer maximum rate necessary to generate the amount of income needed to pay benefits is the negative employer minimum rate necessary to generate the amount of income needed to pay benefits plus three and six-tenths percent. However, the maximum rate must be at least five and four-tenths percent.

d. The tax rate necessary to generate the amount of income needed to reach a solvency balance must be calculated by dividing the solvency balance by the amount of income estimated as needed to pay benefits and multiplying the resulting ratio times each rate, within the positive and negative rate arrays, as determined under this section to meet the average required rate needed to pay benefits as defined by subdivision a. The ratio calculated under this subdivision must also be multiplied by any rate calculated as required by subsection 6 to arrive at a final rate for a new business. All results calculated under this subdivision must be rounded to the nearest one-hundredth of one percent.

6. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.

b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:

(1) For each calendar year new employers must be assigned a rate that is one hundred fifty percent of the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.

(2) New employers in construction services must be assigned the negative employer maximum rate.

(3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the three-digit major group provided in the North American industrial classification system manual, in accordance with established classification practices found in the North American industrial classification system manual, issued by the executive office of the president, office of management and budget. Employers who are liable for coverage before August 1, 2001, remain under an industrial classification under the two-digit major group provided in the standard industrial classification manual unless they are classified in the construction industry within the standard industrial classification code.

7. An employer who has ceased to be liable for contributions shall continue its established experience rating account if it again becomes liable within three years from the date that it ceased to be liable providing that the employer's experience record has not been transferred in accordance with section 52-04-08. The employer's rate, however, must be determined in accordance with subsection 6.

52-04-06. Variations in standard rate of contributions - How determined.

1. An employer's reserve ratio is the difference between the six-year contributions paid by that employer on or before October thirty-first of any year, with respect to wages paid by that employer before October first of that same year, and the six-year benefits charged to that employer's account before October first of that year, divided by the average annual payroll. Employers whose cumulative contributions exceed cumulative benefits must be assigned within the positive employer rate groups. Employers whose cumulative contributions are equal to or less than cumulative benefits must be assigned within the negative employer rate groups.

2. For each calendar year the bureau shall establish a schedule of positive employer rate groups within the positive employer minimum rate and the positive employer maximum rate determined under section 52-04-05. Each successive rate group for positive employer rate groups must be assigned a rate equal to the previous group's rate plus one-tenth of one percent. The number of rate groups in the positive employer schedule must be the number required to provide for a rate group at each one-tenth of one percent interval between the positive employer minimum rate and the positive employer maximum rate determined under section 52-04-05. For each calendar year the bureau shall establish a schedule of negative employer rate groups with the negative employer minimum rate and the negative employer maximum rate determined under section 52-04-05. Each successive rate group for negative employer rate groups must be assigned a rate equal to the previous group's rate plus four-tenths of one percent. The number of rate groups in the negative employer schedule must be the number required to provide for a rate group

at each four-tenths of one percent interval between the negative employer minimum rate and the negative employer maximum rate determined under section 52-04-05.

3. Positive employers must be assigned to the rate in the positive employer rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio positive employers assigned to the first positive employer rate. Each successively ranked positive employer must be assigned to a rate within the positive employer rate schedule so that each rate within the rate schedule is assigned the same proportion of the positive employer's prior year's taxable wages. Negative employers must be assigned to the rate in the negative employer rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio negative employers assigned to the first negative employer rate. Each successively ranked negative employer must be assigned to a rate within the negative employer rate schedule so that each rate within the rate schedule is assigned the same proportion of the negative employer's prior year's taxable wages.

4. a. After each year's rate schedule has been established, an employer may pay into the fund, or cause to be paid into the fund on the employer's behalf, an amount in excess of the contributions required to be paid under this section. That amount must be credited to the employer's separate account. The employer's rate must be recomputed with the amount paid pursuant to this subsection included only, except as allowed by subdivision b, if that amount was paid by April thirtieth of that year. Payments may not be refunded or used as credit in the payment of contributions.

   b. An employer that enters a contract with a staffing service, other than a temporary staffing service, may make the payments authorized by this subsection at any time during the rate year and the agency will determine if that payment is adequate to allow the staffing service to comply with subsection 3 of section 52-04-24; however, the employer's tax rate will remain in effect for the remainder of the tax year. The agency will deposit any payment received pursuant to this subsection immediately and will credit it to the employer's separate account, but the agency will apply the payment to the calculation of the employer's tax rate for the following rate year. In order to take advantage of this subdivision and subsection 3 of section 52-04-24, an employer may not be delinquent in its unemployment insurance tax payments on the date on which the payment authorized by this subdivision is made.

5. In the bureau's determination of the projected income requirements for computing contribution rates and taxable wage base, only the wages paid by, and the cost of benefits attributable to, tax-rated employers may be taken into account.

6. If an employer has a quarterly taxable payroll in excess of fifty thousand dollars and at least three times its established average annual payroll or the average annual payroll is zero, and the employer's cumulative lifetime reserve balance is positive, then the tax rate for that employer is one hundred fifty percent of the positive employer maximum rate in effect that year or a rate of one percent, whichever is greater, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year. If the employer's cumulative lifetime reserve balance is negative, then the tax rate for that employer is the negative employer maximum rate of contribution in effect that year, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year.

52-04-06.1. Construction project risk protection.

1. Any project in this state with an estimated construction cost of at least fifty million dollars which is planned to be completed or discontinued within a period of seven years is subject to this section. The general or prime contractor, or the owner in those situations in which there is no general or prime contractor, of a project that

meets the criteria specified under this section shall post the bond or irrevocable letter of credit required in subsection 2 before commencement of construction work on the project and shall report annually, within thirty days of the anniversary date the project becomes subject to this section, to the bureau any change in the construction costs of projects subject to this section.

2. If the bureau determines that the project is or will be within the criteria stated by this section, the bureau shall require the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, for whom the project is being constructed, on behalf of each employing unit, to post a bond executed by a surety company authorized to do business in the state or an irrevocable letter of credit from a federal deposit insurance corporation insured state or nationally chartered bank authorized to do business in the state which will insure payment for all benefits claimed by employees of all employing units working on the project. The bureau may adjust the amount of bond or irrevocable letter of credit required under this subsection to cover any significant increases or decreases in project construction costs reported by the general or prime contractor or owner. If any general or prime contractor or owner fails to comply with this subsection, the bureau may apply to any court of this state within the jurisdiction in which the contractor or owner is found, located, or transacts business to obtain an order to compel the general or prime contractor or owner to post the required bond or irrevocable letter of credit required under this subsection. Any failure to obey an order of the court may be punished by the court as a contempt of court.

3. The amount of bond or irrevocable letter of credit must be the difference between the estimated benefits paid and estimated contributions. The estimation of contributions expected must be made as follows: multiply the current year's negative employer minimum rate or six percent, whichever is greater, times the current year's taxable wage base times the estimated number of employees on the project using figures from project plans, times the number of years between the start date and the estimated completion date of the project. The estimation of benefits paid must be made as follows: the ratio of benefits charged to contributions paid in the most recent three fiscal years by employers in the construction industry multiplied by the estimated contributions.

4. Thirty months after the completion or discontinuance of the project, the bureau shall determine the total benefits paid to employees of the employing unit or units. If the total amount paid to the employees of the unit or units exceeds the total amount of contributions collected from the units under the North Dakota Unemployment Compensation Law, the general or prime contractor or the owner shall pay the total amount of benefits paid to the employees of the units which exceeded the total amount of contributions collected from the unit or units. If the general or prime contractor or the owner does not pay the payment requirement, job service North Dakota shall collect the payment from the surety company that executed the surety bond or bank that issued the irrevocable letter of credit.

5. For the purposes of this section, a project includes all entities that employ or contract for the employment of, or is employing directly or indirectly through agents, independent contractors, or subcontractors. Each employing unit, whether contractor, subcontractor, or otherwise, involved in the project is subject to this section.

6. Each employing unit having employees working on a project subject to this section shall maintain separate records for all employment on the project showing each individual's name, social security number, wages paid, and the dates the wages were paid. The employers shall submit separate reports from other employment subject to the North Dakota Unemployment Compensation Law under a separate reporting account established for the project.

7. This section applies to projects for which bids are let after August 1, 2001.

8. The determination of whether a project is subject to this section must be made in the same manner as provided for in section 52-04-17.

9. This section does not apply to any project in which the state is the owner or contractor.

52-04-07. Benefits paid chargeable to accounts of base-period employers.

1. Benefits paid to an individual must be charged against the accounts of the individual's base-period employers. The amount of benefits so chargeable against each base-period employer's account must bear the same ratio to the benefits paid to an individual as the base-period wages paid to the individual by such employer bear to the total amount of the base-period wages paid to the individual by all of the individual's base-period employers.

2. Notwithstanding subsection 1, an employer's account may not be charged for any of the following:

   a. With benefits paid to an individual for unemployment that is directly caused by a major natural disaster declared by the president pursuant to section 102(2) of the Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143; 42 U.S.C. 5122(2)], if the individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment insurance benefits.

   b. With benefits paid to an individual who either:

      (1) Left the employment of the base-period employer voluntarily without good cause or with good cause not involving fault on the part of the base-period employer; or

      (2) Who was discharged from employment by the base-period employer for misconduct.

   c. As provided under section 52-06-29.

   d. With benefits paid to an individual who is in training with the approval of job service North Dakota.

   e. With benefits paid to an individual who is subsequently determined not entitled to receive the benefits.

   f. With benefits paid to an individual who is currently employed part time with that employer when the hiring agreement between the individual and the employer has not changed since the individual commenced work for that employer. This subdivision does not apply to an employee of a temporary help firm.

3. Subsection 2 does not apply to benefit payments which are financed under a reimbursable method.

4. Any nonprofit organization which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in section 52-04-18 is not liable to make such payments with respect to the benefits paid to any individual whose base-period wages include wages for previously uncovered services as defined in subsection 3 of section 52-06-04 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Pub. L. 94-566.

5. Notwithstanding the provisions of subsection 1, an employer's account may not be charged with benefits paid for previously uncovered services as defined in subsection 3 of section 52-06-04 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Pub. L. 94-566.

52-04-08. Succession to predecessor's experience record - Impact of substantial common ownership, management, or control.

1. An employing unit that in any manner acquires all or part of the organization, business, trade, workforce, or assets of another employer and continues essentially the same business activity of the whole or part transferred, may upon request be transferred in accordance with law and any relevant rules adopted by the agency, the whole or appropriate part of the experience record, reserve balance, and benefit experience of the predecessor employer, unless the agency finds that the employing unit acquired the business solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate. If the predecessor files a written protest against such transfer within fifteen days of being notified of the successor's application, the transfer will not be made.

2. When an employing unit in any manner acquires all or part of the organization, business, trade, workforce, or assets of another employer, the agency shall transfer all or the appropriate part of the experience record, reserve balance, whether positive or negative, and benefit experience of such predecessor to the successor if it finds that there was, at the time of acquisition, substantially common ownership, management, or control of the predecessor and the successor.

3. When a part of an employer's experience record reserve account and benefit experience is transferred under this section, the portion of the experience record and reserve account transferred must be in the same ratio to the total experience record and reserve account as the average annual payroll of the transferred organization, trade, business, workforce, or assets is to the total average annual payroll of the predecessor.

4. An employing unit's experience record may not be transferred in an amount that results in the successor and predecessor portions totaling more than one hundred percent of the predecessor's history.

52-04-08.1. Implementation of federal anti-SUTA dumping legislation. The agency shall implement section 52-04-08.2 to ensure necessary compliance with section 303(k) of the Social Security Act [Pub. L. 108-195; 42 U.S.C. 503]. The agency shall adopt rules and procedures necessary to ensure compliance with that section. The agency may issue necessary subpoenas, in accordance with sections 52-06-23 and 52-06-25, to carry out its responsibilities under this chapter.

52-04-08.2. Transfers of unemployment insurance experience - Recalculation of rates - Definitions - Civil and criminal penalties. Notwithstanding any other provision of law, the following applies regarding assignment of penalty tax rates and transfers and acquisitions of businesses:

1. a. If an employer transfers all or a part of its trade or business to another employer and at the time of the transfer there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the transferred trade or business is transferred to the employer to which the business is transferred. The rates of both employers must be recalculated and made effective on the first day of the quarter in which the transfer took effect. The transfer of any of the employer's workforce to another employer is considered a transfer of trade or business under this subsection if, as a result of the transfer, the transferring employer no longer performs the trade or business in which the transferred workforce was

engaged, and the trade or business is performed by the employer to which the workforce was transferred.

b. If, following a transfer of experience under subdivision a, the agency determines that a substantial purpose of the transfer of trade or business was to obtain a reduced unemployment insurance tax rate, the experience ratings of the employers involved must be combined into a single account and a single unemployment insurance tax rate must be assigned to that account.

2. If a person, who at the time of acquisition is not an employer under this title, acquires the trade or business of an employer, the unemployment experience of the acquired business may not be transferred to that person if the agency finds that the person acquired the business solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate. Instead, the person must be assigned the applicable new employer rate calculated under section 52-04-05. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate, the agency shall use objective factors that may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long the business enterprise was continued, and whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted before acquisition.

3. If a person knowingly acts or attempts to transfer or acquire a trade or business solely or primarily for the purpose of obtaining a lower unemployment insurance tax rate or knowingly violates any other provision of this chapter related to determining the assignment of an unemployment insurance tax rate, or if a person knowingly advises another person in a way that results in a violation of those provisions, the person is subject to the civil penalties provided in this subsection.

   a. If the person is an employer, the employer must be assigned, in lieu of that employer's experience rate, the highest rate assignable under this chapter for the rate year during which the violation or attempted violation occurred and the three rate years immediately following that rate year. However, if the employer's experience rate is already at the highest rate for any year of that four-year period or if the amount of increase in the person's experience rate imposed under this subdivision would be less than two percent for any year of the four-year period, the penalty unemployment insurance tax rate for the year must be determined by adding a rate increment of two percent of taxable wages to the calculated experience rate.

   b. If the person is not an employer, the person is subject to a civil penalty of not more than twenty-five thousand dollars. Any civil penalty collected must be deposited in the penalty and interest account established under section 52-04-22.

4. In addition to the civil penalty imposed under subsection 3, any person that knowingly violates this section or knowingly attempts to violate this section is guilty of a class C felony.

52-04-09. Classification of employers to determine contributions - Regulations governing. An employer's rate for a calendar year must be determined on the basis of the employer's experience with contribution payments and benefit charges as of October first of the preceding year. If, when such determination is to be made, an employer has failed to file a required report or filed an insufficient report, job service North Dakota shall notify the employer thereof by certified mail addressed to the employer's last-known address. Unless the employer files the report or a sufficient report within fifteen days after mailing of the notice, the employer's rate for the following calendar year must be set as follows:

1. Experience-rated positive employers must be assigned the negative employer minimum rate.

2. Experience-rated negative employers must be assigned the negative employer maximum rate.

3. New positive nonconstruction employers must be assigned the negative employer minimum rate.

4. New positive construction employers must be assigned the negative employer maximum rate.

5. New negative employers must be assigned the negative employer maximum rate.

If, at any time, an employer has failed to file a required report or filed an insufficient report, job service North Dakota may, at any time, estimate the wage information required by the report on the basis of reasonably available evidence. Job service North Dakota shall notify the employer of the estimate by certified mail addressed to the employer's last-known address. Unless the employer files the report or a sufficient report within fifteen days after the mailing of the notice, the estimate becomes final for all purposes, except that if the amount of estimated wages is less than the actual wages, job service North Dakota may reconsider the estimate.

52-04-10. Contributions for ensuing year - Notification - Review. The bureau shall promptly make a determination and notify each employer of the employer's rate of contributions as determined for each ensuing year by the end of the first full week of December, but not later than December tenth, of the preceding year. The rate of contributions must be computed pursuant to the provisions of this chapter. The determination becomes conclusive and binding upon the employer unless, within fifteen calendar days after the mailing of the notice thereof to the employer's last-known address, or in the absence of the mailing, within fifteen calendar days after the delivery of such notice, the employer files a written appeal of the determination. However, no employer shall have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to the provisions of chapter 52-06, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination, or decision or to any other administrative proceeding in which the character of these services was determined. For purposes of this section, an employer was not a party to any such proceeding if notice of the determination, redetermination, or decision and the employer's right to appeal the determination, redetermination, or decision was not mailed or personally delivered to the employer.

52-04-11. Unpaid contributions to bear interest - Penalties for failure to file reports - Penalties and interest collected paid into the federal advance interest repayment fund.

1. Contributions unpaid when due must bear interest at the rate of one and one-half percent per month or fraction thereof from due date.

2. Any employer who fails to submit to the bureau any employer's contribution and wage report by the date due shall pay the bureau a penalty equal to five percent of the contributions due for each month or part of a month until the report is submitted. The penalty for the first month may not be less than twenty-five dollars. The penalty for subsequent months may not exceed twenty percent of contributions due. The maximum penalty imposed by this subsection may not exceed two hundred fifty dollars. The penalty imposed by this subsection may be waived if the bureau determines that the failure to submit the report timely was caused by circumstances beyond the control of the employer.

3. The executive director, or any bureau employee authorized in writing by the executive director, is authorized to enter into written agreements with employers relating to their liability in respect to delinquent contributions, interest, penalties, and costs when such employers are indebted to the bureau because of failure to pay contributions required to be paid within any given period of time; provided, that such agreements must be in accordance with regulations promulgated by the bureau and filed as provided by law, and further provided that they do not contravene any other law, rule, or regulation.

4. The amount added under this section must be collected at the same time and in the same manner and as a part of the contributions and must be paid into the federal advance interest repayment fund.

52-04-11.1. Corporate officer personal liability.

1. Any officer, director, or any employee having twenty percent ownership interest of a corporation and any manager, governor, or employee having twenty percent ownership interest of a limited liability company, that is an employer under the North Dakota Unemployment Compensation Law who has control of or supervision over the filing of and responsibility for filing contribution reports or making payment of contributions under the North Dakota Unemployment Compensation Law, and who fails to file the reports or to make payments as required, is personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation or limited liability company does not pay to the bureau those amounts for which the employer is liable.

2. The personal liability of any person as provided herein shall survive dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation or limited liability company must be considered earned from the person determined to be personally liable.

3. The unemployment insurance division shall make a written determination as to the personal liability of a corporate officer or employee under this section. The determination is final unless the person found to be personally liable files a written appeal of the determination within fifteen calendar days after mailing of the notice of determination to the person's last-known address.

52-04-12. Civil action to collect contributions, interest, penalties, delinquency fees - Service on nonresident employers - Contribution liens - Certificates.

1. Collection process of the bureau shall also be by civil action for collection of any money owing to the bureau from any source and for whatever reason, inclusive of interest thereon, penalties and delinquency fees when there is provision for such additional assessments. Costs of the action allowed by statute must be added when judgment is awarded against the debtor, unless waived. When the debtor is a nonresident of this state and the claim for relief accrued subsequent to July 1, 1963, and prior to July 1, 1969, jurisdiction thereof by service of process must be governed by the provisions of this section as it appeared in chapter 334 of the 1963 North Dakota Session Laws and the Supplement to the North Dakota Century Code from July 1, 1963, to July 1, 1969, and when the claim for relief accrued subsequent to July 1, 1969, and prior to August 1, 1971, jurisdiction thereof by service of process must be governed by the provisions of chapter 293 of the 1969 North Dakota Session Laws and chapter 28-06.1 of the Supplement to the North Dakota Century Code, and when the claim for relief accrued subsequent to August 1, 1971, jurisdiction thereof by service of process must be governed by the amended provisions of rule 4 of the North Dakota Rules of Civil Procedure adopted and promulgated by the supreme court under date of June 28, 1971.

2. Whenever any employer, liable to pay contributions, interest, or penalty, fails to pay, the amount of contributions, interest, penalty, and costs that accrue is a lien in favor of the state upon all property and all rights to property belonging to the employer. The lien attaches at the time the contributions, interest, or penalty becomes due, and continues until the liability is satisfied. To preserve the lien against subsequent mortgages, purchasers for value and without notice of the lien, judgment creditors, and lienholders, job service North Dakota shall file with the recorder, in the county in which the property is located, a notice of the lien. The lien is effective from the time of filing of the notice. The recorder shall preserve the notice and endorse on it the day, hour, and minute when it was received. The recorder shall index the notice of lien in an appropriate index record and record the notice of lien in the manner provided for recording real estate mortgages. The recorder shall accept the notice of lien for filing without payment of a fee by job service North Dakota. Upon payment of the contributions, interest, penalty, and costs, job service North Dakota shall file with the recorder a satisfaction of the lien. The recorder shall enter the satisfaction on the notice of lien, index the satisfaction in an appropriate index record, and record the satisfaction in the manner provided for recording satisfactions of real estate mortgages. The recorder shall accept the satisfaction for filing without payment of a fee by job service North Dakota. The attorney general, upon request of job service North Dakota, may bring suit without bond, to foreclose the lien.

3. Whenever any employer, liable to pay contributions, interest, or penalty, fails to pay the same, job service North Dakota may file a certificate, specifying the amount of contributions, interest, and penalty due and the name of the liable employer, with the clerk of district court in any county. The clerk shall enter and docket the certificate in the same manner as a judgment that directs the payment of money. The certificate has the force and effect of a judgment of the district court. The certificate is a lien on all the real property, except the homestead, of every person named, which the person may have in any county in which the certificate is docketed at the time of docketing or which the person thereafter acquires in the county, for ten years from the time of docketing. The certificate may be renewed in the same manner and with the same effect as a judgment that directs the payment of money. Execution of the certificate is issuable in the same manner as provided for execution of judgments. Job service North Dakota may proceed by garnishment to enforce the certificate in the same manner as a creditor is entitled to proceed by garnishment to enforce a judgment. Upon payment of the contributions, interest, penalty, and costs, job service North Dakota shall file with the clerk of court a satisfaction of the certificate. The clerk shall discharge the record in the same manner as judgments.

4. The foregoing remedies are cumulative and no action taken by job service North Dakota may be construed to be an election to pursue any remedy to the exclusion of any other remedy provided by law.

52-04-13. Priority rights to contributions upon legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for the benefits of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due must be paid in full prior to all other claims except taxes and claims for wages of not more than two hundred fifty dollars to each claimant, earned within four months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Bankruptcy Reform Act of 1978 [Pub. L. 95-598; 92 Stat. 2583] contributions then or thereafter due are entitled to such priority as is provided in section 507 of that Act [11 U.S.C. 507]. In any action for the recovery of delinquent and defaulted contributions, the remedies of garnishment or attachment, or both, are available. No exemptions except absolute exemptions may be allowed against any levy under execution pursuant to judgment recovered in such action.

52-04-14. Adjustment and refund of contributions. Not later than three years after the date on which any contributions or interest thereon was paid, if the employer that paid such

contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the bureau shall determine that such contributions or interest or any portion thereof was collected erroneously, the bureau shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by the employer, or if such adjustment cannot be made, the bureau shall refund said amount, without interest, from the fund. For like cause and within the same period, an adjustment or refund may be made on the bureau's own initiative.

52-04-15. Refund of moneys not authorized by provisions of law. Nothing in the North Dakota Unemployment Compensation Law may be constructed to authorize any refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid.

52-04-16. Limitations on actions brought by bureau. Actions brought under section 52-04-12 must be commenced within six years after the claim for relief has accrued; provided, however, that in the case of a false or fraudulent return, or the willful failure to file a return with intent to evade any payment, proceedings in court may be begun at any time.

52-04-17. Administrative determinations of coverage. The unemployment insurance division, upon its own motion or upon application of an employing unit, may make a written determination with respect to whether an employing unit constitutes an employer, or whether services performed for or in connection with the business of an employing unit constitute employment, or both such determinations. A determination made pursuant to this section is final unless the employing unit, within fifteen calendar days of the date of mailing of the determination, files a written appeal with job service North Dakota.

52-04-17.1. Retroactive payment not required. When the bureau reviews a potential employment relationship involving an independent contractor who has a valid identification number issued under section 34-05-01.4 and determines that the party described as an independent contractor is an employee for purposes of unemployment compensation, rather than an independent contractor, the bureau may not require the party determined to be the employer to pay contributions for that employee, or any interest, penalty, or delinquency fee with respect to those contributions, retroactive to the date the relationship with the employee began, unless, however, the bureau determines that the employer willfully and intentionally entered the relationship with the purpose of avoiding unemployment compensation benefits. The bureau may require the payment of contributions for that employee as of the date the order declaring an employment relationship becomes final.

52-04-18. Financing benefits paid to employees of nonprofit organizations. Benefits paid to employees of nonprofit organizations must be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization, or group of organizations, described in section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under section 501(a) of such code.

1. Liability for contributions and election of reimbursement. Any nonprofit organization which, pursuant to subdivision i of subsection 15 of section 52-01-01, is, or becomes, subject to the North Dakota Unemployment Compensation Law on or after January 1, 1972, shall pay contributions under the provisions of this chapter, unless it elects, in accordance with this subsection, to pay to the bureau for the unemployment fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

    a. Any nonprofit organization which is, or becomes, subject to the North Dakota Unemployment Compensation Law on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one taxable year beginning with January 1, 1972, provided it files with the bureau a

written notice of its election within the thirty-day period immediately following such date or within a like period immediately following the date of enactment of this subdivision, whichever occurs later.

b. Any nonprofit organization which becomes subject to the North Dakota Unemployment Compensation Law after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the bureau not later than thirty days immediately following the date of the determination of such subjectivity.

c. Any nonprofit organization which makes an election in accordance with subdivision a or subdivision b will continue to be liable for payments in lieu of contributions until it files with the bureau a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective, and it shall thereafter be treated as a new or newly covered employer for the purpose of rate computation.

d. Any nonprofit organization which has been paying contributions under the North Dakota Unemployment Compensation Law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the bureau not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election is not terminable by the organization for that and the next year.

e. The bureau may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

f. The bureau, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations are subject to reconsideration, appeal, and review in accordance with administrative regulations of the bureau established for appeals from determinations on claims for benefits and thereafter the decision of the bureau is subject to judicial review as provided for in chapter 52-06.

2. Reimbursement payments. Payments in lieu of contributions must be made in accordance with the provisions of this subsection including either subdivision a or b.

a. At the end of each calendar quarter, or at the end of any other period as determined by the bureau, the bureau shall bill each nonprofit organization, or group of such organizations, which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

b. An alternative method for reimbursement payments may be as follows:

(1) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as hereinafter provided. Such method of payment becomes effective upon approval by the bureau.

(2) At the end of each calendar quarter, the bureau shall bill each nonprofit organization for an amount representing one of the following:

(a) For 1972, two-tenths of one percent of its total payroll for 1971.

(b) For years after 1972, such percentage of its total payroll for the immediately preceding calendar year as the bureau shall determine. Such determination must be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

(c) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the bureau shall determine.

(3) At the end of each taxable year, the bureau may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(4) At the end of each taxable year, the bureau shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined is liable for payment of the unpaid balance to the fund in accordance with subdivision c. If the total payments exceed the amount so determined for the taxable year, all or a part of the excess may, at the discretion of the bureau, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

c. Payment of any bill rendered under subdivision a or b must be made not later than thirty days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review in accordance with subdivision e.

d. Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

e. The amount due specified in any bill from the bureau is conclusive on the organization unless, not later than fifteen days after the bill was mailed to the last-known address or otherwise delivered to it, the organization files an appeal with the bureau setting forth the grounds for such appeal. Proceedings on appeal to the bureau from the amount of a bill rendered under this subsection must be in accordance with administrative regulations of the bureau and thereafter the decision of the bureau is subject to judicial review as provided for in chapter 52-06.

f. Past due payments of amounts in lieu of contributions are subject to the same interest, delinquency fee, and penalties that, pursuant to this chapter apply to past due contributions.

3. Authority to terminate elections. If any nonprofit organization is delinquent in making payments in lieu of contributions as required under subsection 2, the bureau may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination is effective for that and the next taxable year.

4. Allocation of benefit costs. Each employer that is liable for payments in lieu of contributions shall pay to the bureau for the fund the amount of regular benefits plus

the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments must be determined in accordance with the provisions of subdivision a or b.

a. Proportionate allocation, when fewer than all base-period employers are liable for reimbursement. If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions must be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

b. Proportionate allocation, when all base-period employers are liable for reimbursement. If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer must be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

5. Notwithstanding any provisions in this section, any nonprofit organization that prior to January 1, 1969, paid contributions required by this chapter, and elects, within thirty days after July 1, 1971, to make payments in lieu of contributions, may not be required to make any such payment on account of any regular or extended benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which begin on or after the effective date of such election until the total amount of such benefits equals the amount of the positive balance in the experience rating account of such organization.

52-04-19. Financing benefits paid to employees of the state hospitals or state institutions of higher education. Benefits paid to employees based on service attributable to employment in state hospitals or of state institutions of higher education must be financed in accordance with the provisions of this section. For the purpose of this section and subdivision h of subsection 15 of section 52-01-01, an institution of higher education means an educational institution defined in subsection 27 of section 52-01-01, and a state hospital means an institution defined in subsection 25 of section 52-01-01. An employing unit which, pursuant to subdivision h of subsection 15 of section 52-01-01, is, or becomes, subject to the North Dakota Unemployment Compensation Law on or after January 1, 1972, shall pay contributions under the provisions of this chapter, unless it elects as hereafter provided to pay to the bureau for the unemployment fund an amount equal to the amount of regular benefits and the extended benefits paid, that is attributable to service in the employ of such state hospital or such state institution of higher education, to individuals for weeks of unemployment which begin during the effective period of such election. Payments in lieu of contributions must be made at the end of each calendar quarter or at the end of any other period determined by the bureau. Election and changes in the method of financing must be in the same manner provided for in section 52-04-18.

52-04-19.1. Financing benefits paid to employees of the state of North Dakota and governmental entities within the state of North Dakota.

1. Benefits paid to employees of the state of North Dakota, its departments and instrumentalities, or any instrumentality of more than one of the foregoing, or an instrumentality of the foregoing and one or more other states, which are attributable

to employment by an employing unit which, after December 31, 1977, is defined as an employer, must be financed by one of the following methods:

a. By payment of contributions as provided under section 52-04-06, plus one-half the cost of the extended benefits paid that are attributable to wages paid by an employer.

b. By payment in lieu of contributions each quarter for the calendar years 1978 and 1979 in an amount equal to one percent of their total quarterly payroll, and the rate of contributions to be paid for each two-year period after 1979 must be as determined by the bureau each January by computing the cost of benefits paid under chapters 52-06 and 52-07.1 which are attributable to wages paid by employers, and the bureau may modify such rate in order to minimize excess or insufficient payments in any prior periods.

c. In lieu of contributions an employer may elect to pay to the bureau for the unemployment fund an amount equal to the amount of benefits paid under chapters 52-06 and 52-07.1 which are attributable to wages paid in the employ of such governmental employer, to individuals for weeks of unemployment.

2. Benefits paid to employees of political subdivisions, other than state government, its departments and instrumentalities, or any instrumentality of more than one of the foregoing which are attributable to employment by an employing unit which, after December 31, 1977, is defined as an employer, must be financed by one of the following methods:

a. By payment of contributions as provided under section 52-04-06 plus one-half the cost of the extended benefits paid that are attributable to wages paid by an employer.

b. By payment in lieu of contributions each quarter for the calendar year 1978 in an amount equal to one percent of their total quarterly payroll, and the rate of contribution to be paid quarterly each year after 1978 must be determined by the bureau each January by computing the cost of benefits paid under chapters 52-06 and 52-07.1 which are attributable to wages paid by employers, and the bureau may modify such rate in order to minimize excess or insufficient payments in any prior periods.

c. In lieu of contributions an employer may elect to pay to the bureau for the unemployment fund an amount equal to the amount of benefits paid under chapters 52-06 and 52-07.1 which are attributable to wages paid in the employ of such governmental employer, to individuals for weeks of unemployment.

3. Employers under this section shall notify the bureau of the plan selected for financing benefits within sixty days of becoming an employer. In the event of an unexcused failure of an employer to notify the bureau of the plan selected for financing benefits, the bureau shall assess that employer the rate of contributions provided for in section 52-04-06 plus one-half the cost of the extended benefits paid that are attributable to wages paid by that employer.

4. Elections and changes in the method of financing provided for in section 52-04-18 are applicable to employers under this section.

5. Any two or more employers under this section may file a joint application for the establishment of a group for the purpose of wage reporting and financing as regulations may prescribe.

6. Past due payments under this section are subject to the same interest and penalties that apply to past due contributions in section 52-04-11.

52-04-20. Group accounts. Two or more employers that have become liable for payments in lieu of contributions may file a joint application to the bureau for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application must identify and authorize a group representative to act as the group's agent for the purposes of the North Dakota Unemployment Compensation Law. Upon the approval of the application, the bureau shall establish a group account for such employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. Such account must remain in effect for not less than two years and thereafter until terminated at the discretion of the bureau or upon application by the group. Upon establishment of the account, each member of the group is liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The bureau shall prescribe such regulations as it deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this section, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this section by members of the group and the time and manner of such payments.

52-04-21. Advances from federal unemployment trust fund. The governor is authorized to apply for advances to the state of North Dakota from the federal unemployment trust fund and to accept responsibility for repayment of such advances in accordance with the conditions specified in title XII of the Social Security Act, as amended, in order to secure to this state the advantages available under the provisions of said title.

Advances from the federal unemployment trust fund which are interest-bearing must have such interest cost assessed against and paid from the federal advance interest repayment fund.

52-04-21.1. Advances from certain sources other than federal unemployment trust fund. Job service North Dakota may borrow funds from the Bank of North Dakota. Job service North Dakota may also receive title XII advances from the federal unemployment trust fund. However, the borrowings and advances may not exceed amounts which are necessary and sufficient to meet payment of unemployment compensation benefits, repayment of title XII advances from the federal unemployment trust fund, and payment of interest on title XII advances from the federal unemployment trust fund. Any such amounts borrowed from the Bank of North Dakota must be repaid no later than the end of the biennium in which they are borrowed. Any such amounts borrowed from the Bank of North Dakota are not indebtedness of the state or of any officer or agent of the state within the meaning of any statutory or constitutional provision. The borrowed funds may be placed in the state unemployment compensation fund or in the federal advance interest repayment fund established under section 52-04-22.

Any such amounts placed in the state unemployment compensation fund may be used to pay unemployment compensation benefits and to repay title XII advances from the federal unemployment trust fund. Any such amounts placed in the federal advance interest repayment fund may be used to pay interest on title XII advances from the federal unemployment trust fund.

Job service North Dakota may repay funds borrowed from the Bank of North Dakota, which are placed in the state unemployment compensation fund, from amounts in the state unemployment compensation fund. Job service North Dakota may also repay funds borrowed from the Bank of North Dakota which are placed in the federal advance interest repayment fund, from amounts in the federal advance interest repayment fund. However, any interest due on any borrowed funds whatsoever may not be paid from amounts in the state unemployment compensation fund. Interest due on such borrowed funds must be paid from the federal advance interest repayment fund.

52-04-22. Federal advance interest repayment fund - Continuing appropriation. There is created the federal advance interest repayment fund, to which will be credited all

assessments collected by the division for the purpose of paying interest due on federal advances to the state trust fund. The fund must consist of all interest collected on delinquent contributions, all penalties provided by the Unemployment Compensation Law, and funds borrowed from sources other than federal advances which are placed in this fund. All moneys accruing to this fund in any manner must be maintained in this separate interest-bearing account at the Bank of North Dakota or invested in deposits of the Bank of North Dakota.

Moneys in this fund may also be used for the purpose of repaying funds placed in this fund which are borrowed from sources other than federal advances and for the purpose of paying interest due on other than federal advances. However, moneys in this fund may not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the bureau.

Moneys in this fund may also be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund also may be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund may be used for the purpose of paying the costs of repair, renovation, or alteration of job service-owned office facilities. Moneys in this fund may be used for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund are hereby appropriated for the purposes specified in this section including the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund are appropriated for the purpose of paying the principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund are appropriated for the purpose of paying the costs of repair, renovation, or alteration of job service-owned office facilities. Moneys in this fund are appropriated for the purpose of paying the replacement rate charged for use of state fleet vehicles.

52-04-23. Financing benefits paid to employees of Indian tribes.

1. Benefits based on service in employment with an Indian tribe are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to the North Dakota Unemployment Compensation Law.

2. a. Indian tribes or tribal units subdivisions, subsidiaries, or business enterprises wholly owned by the Indian tribe, subject to the North Dakota Unemployment Compensation Law, shall pay contributions under the same terms and conditions as all other subject employers, unless it elects to pay into the state unemployment fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

   b. Indian tribes electing to make payments in lieu of contributions must make such election in the same manner and under the same conditions as provided in sections 52-04-18 and 52-04-19.1. Indian tribes may determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

   c. Indian tribes or tribal units must be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

d. An Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions must, within thirty days after the effective date of its election, execute and file with the bureau a surety bond approved by the bureau.

3. a. Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill causes the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection 2, for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.

b. An Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision a, is entitled to have the option reinstated if, after a period of one year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

c. Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the bureau have been exhausted, causes services performed for the tribe to not be treated as employment for purposes of subsection 17 of section 52-01-01.

d. The bureau may determine that an Indian tribe that loses coverage under subdivision c may have services performed for the tribe again included as employment, for purposes of subsection 17 of section 52-01-01 if all contributions, payments in lieu of contributions, penalties, and interest have been paid.

e. The bureau will notify the United States internal revenue service and the United States department of labor of a termination or reinstatement of coverage made under subdivisions c and d.

4. Notices of payment and reporting delinquency to Indian tribes or their tribal units must include information that failure to make full payment within the prescribed timeframe:

a. Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act;

b. Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and

c. May cause the Indian tribe to be excepted from the definition of employer, as provided in subsection 15 of section 52-01-01, and services in the employ of the Indian tribe, as provided in subsection 17 of section 52-01-01, to be excepted from employment.

5. Benefits paid that are attributable to service in the employ of an Indian tribe must be financed as provided in section 52-04-19.1.

52-04-24. Staffing services - Payment of unemployment insurance taxes.

1. If a staffing service exclusively provides temporary staffing services, the staffing service is considered to be the employee's employer and the staffing service shall pay unemployment insurance taxes at the staffing service's unemployment insurance tax rate. If a staffing service provides temporary and long-term employee staffing services, the staffing service is subject to the reporting and tax requirements associated with the type of employee provided to the client company.

2. For the purposes of long-term employee staffing services provided by a staffing service, the staffing service shall:

   a. Report quarterly the wages of all employees furnished to each client company and pay taxes on those wages at the client company's unemployment insurance tax rate, except as otherwise provided under subsection 3.

   b. Maintain complete and separate records of the wages paid to employees furnished to each of the client companies. Claims for benefits must be separately identified by the staffing service for each client company.

   c. Notify the agency of each client company's name and unemployment insurance account number and the date the staffing service began providing services to the client company. The staffing service shall provide the agency with the information required under this subdivision upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.

   d. Supply the agency with a copy of the agreement between the staffing service and the client company.

   e. Notify the agency upon termination of any agreement with a client company, but no later than fifteen days from the effective date of the termination.

   f. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between the staffing service and a client company is terminated, the employees become the sole employees of the client company.

3. For the purposes of long-term employee staffing services provided by a staffing service, upon authorization of the agency, the staffing service may be considered to be the employee's employer and the staffing service shall pay unemployment insurance taxes at the staffing service's unemployment insurance tax rate. The agency may not make an authorization under this subsection unless one of the following requirements is met:

   a. In the case of a client company unemployment insurance tax rate that is higher than the staffing services tax rate:

      (1) The staffing service:

         (a) Calculates the difference between the staffing service's tax rate and the client company's tax rate;

         (b) Applies the difference to the wages to be earned by the employees furnished to the client company in the following completed calendar quarter; and

         (c) Notifies the agency that such application would, if the staffing service's tax rate were applied to those same wages, cause a reduction in the tax due on those wages which does not exceed five hundred dollars.

      (2) If the reduction under paragraph 1 exceeds five hundred dollars, at the written request of the staffing service, the agency may make a written determination that it is appropriate to allow the staffing service to use the staffing service's unemployment insurance tax rate.

b. The staffing service includes in its contract with the client company a requirement that if the client company's unemployment insurance tax rate is higher than the staffing service's tax rate, the client will arrange to make payment to the agency, pursuant to subsection 4 of section 52-04-06, in the amount necessary to cause the client company's unemployment insurance tax rate should it be recomputed to be determined by the agency to be equivalent to the staffing service's unemployment insurance tax rate. Before the agency makes an authorization under this subdivision, the agency actually must receive payment of the amount required to cause the determination that the client company has complied with this subdivision.

c. The staffing service demonstrates to the agency that the staffing service has entered an agreement with a client company that has an unemployment insurance tax rate that is, at the time of execution of the contract, equal to or lower than the staffing service's tax rate.

4. If a staffing service enters a contract with a client company that has an unemployment insurance tax rate that is lower than the staffing service's tax rate, the agency shall determine the following year's tax rate for the staffing service by calculating a blended reserve ratio using the proportion of that client company's total wages paid for up to the previous six years to the total wages paid for up to the previous six years for all of that staffing service's client companies whose furnished workers are considered the staffing service's employees for unemployment insurance tax purposes pursuant to subsection 3.

5. Both a staffing service and client company are considered employers for the purposes of this title. Both parties to a contract between a staffing service and a client company are jointly liable for delinquent unemployment insurance taxes, and the agency may seek to collect such delinquent taxes, and any penalties and interest due, from either party. This chapter does not modify or impair any other provisions of the contract between the staffing service and the client company not relating to the requirements of this subsection concerning liability for payment of taxes on the wages paid to workers furnished by the staffing service to the client company, and the means of determining the tax rate to be applied to those wages.

6. The agency shall determine whether a person is a staffing service. If the agency determines a person is a staffing service, the agency may further determine if the person is a temporary staffing service. The agency's determination must be issued in writing, and within fifteen days of the date of issuance of that determination, a person aggrieved by that determination may appeal that determination. The appeal must be heard in the same manner and with the same possible results as all other administrative appeals under this title. In making a determination under this subsection, the agency may consider:

a. The number of client companies with which the staffing service has contracts;

b. The length of time the staffing service has been in existence;

c. The extent to which the staffing service extends services to the general public;

d. The degree to which the client company and the staffing services are separate and unrelated business entities;

e. The repetition of officers and managers between the client company and staffing service;

f. The scope of services provided by the staffing service;

g. The relationship between the staffing service and the client company's workers;

h. The written agreement between the staffing service and the client company; and

i. Any other factor determined relevant by the agency.

7. The agency may require information from any staffing service, including a list of current client company accounts, staffing assignments, and wage information. A client company shall provide any information requested by the agency regarding any staffing service.